

REMARKS

Claims 1, 5, 17, 20, and 24-25 and 27 are pending in the subject application. Claims 1, 5, 17, 20, and 24-25 have been amended to recite "TS" instead of "EGFR" and to correct typographical errors. Claim 25 has been amended to correct SEQ ID NOs. Support for this amendment is found in the specification on page 24, lines 23-24. No new matter is raised by these claim amendments.

Accordingly, claims 1, 5, 17, 20, and 24-25 and 27 are presented for examination on the merits.

**Rejection of claims 1, 5, 17, 20, 24, 25 and 27 under
of 35 U.S.C. §112, First Paragraph**

All pending claims stand rejected under 35 U.S.C. § 112, first paragraph, as lacking enablement. In particular, the Examiner maintains that the specification lacks any evidence or guidance that there is a linear correlation between the expression of EGFR levels in primary and metastatic tumor for EGFR. However, the Examiner does state that the specification provides a working example for the marker TS that supports the linear correlation between TS mRNA expression in the primary and secondary tumors. See pages 7-8 of the Office Action.

Applicants respectfully traverse. The presently pending claims provide a method for determining a chemotherapeutic regimen for treating a metastatic tumor based on the primary tumor TS expression level. The amended claims are clearly described in the specification with sufficient detail that one skilled in the art would be able to use the method to determine an appropriate chemotherapeutic regimen. *See, e.g.*, Specification, page 40 lines 13 - page 43, line 11, and page 48, lines 19- page 49, line 24.

Therefore, Applicants submit that the amended claims are adequately described in the specification to enable one skilled in the art to practice the method. Accordingly, the

Applicants respectfully request withdrawal of this ground of rejection.

CONCLUSION

It is believed that the present claims are in conditions for allowance and earnestly request allowance. Extensions of time are hereby petitioned under 37 C.F.R. § 1.136(a), and any fees required therefore are hereby authorized to be charged to our Deposit Account No. 11-0600. The Office is hereby authorized to charge any additional fees or credit any overpayments to Kenyon & Kenyon Deposit Account No. 11-0600. The Examiner is invited to contact the undersigned at 202-220-4200 to discuss any matter concerning this application.

Respectfully submitted,

KENYON & KENYON LLP



Robert F. Vroom
Reg. No. 47,161

Date: 10/10/06

1500 K Street, N.W.
Washington, D.C. 20005
Telephone: (202) 220-4200
Facsimile: (202) 220-4201